

MAY 31 2017



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Certified Mail
7016 1370 0000 0748 9474

IN THE MATTER OF: XTREME DIESEL PERFORMANCE, LLC

Xtreme Diesel Performance, LLC
1758 State Route 34
Wall Township, New Jersey 07727-3937

Xtreme Diesel Performance
5550 Cameron Street
Suite J – K
Las Vegas, Nevada 89118-6220

ATTENTION: Robert Craft

Request for Information under Section 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a)

The United States Environmental Protection Agency (EPA) hereby requires Xtreme Diesel Performance, LLC (XDP) to submit certain information as part of an EPA investigation to determine XDP's compliance with Section 203 of the Clean Air Act (CAA), 42 U.S.C. § 7522, and the applicable regulations at 40 C.F.R. Parts 85 and 86. Examples of vehicles or pieces of equipment regulated under these Parts include, but are not limited to, light-duty and heavy-duty trucks. Appendix B specifies the information that you must submit, Appendix C provides instructions for your response to this request, and Appendix D provides definitions for some of the terms used in this request.

We are issuing this Request for Information under Section 208(a) of the CAA, 42 U.S.C. § 7542(a). Under Section 208(a) of the CAA, EPA may require any person who is subject to the CAA to provide information necessary to determine whether the person has acted in compliance with the requirements and the regulations promulgated thereunder. The Administrator has delegated this authority to the undersigned Manager of Region 9's Air & TRI Section, Enforcement Division.

You must submit responses to this Request for Information within 30 calendar days from the date you receive this letter. If you anticipate being unable to fully respond to this request by the deadline, you must contact Kingsley Adeduro at 415-972-4182 or Adeduro.Kingsley@epa.gov to request an extension of time. Any such request must explain why an extension is necessary and include a proposed timeline for providing the requested information. EPA will review your request and may extend the time in which your response must be provided to some or all of the questions.

Failure to provide the required information may result in the initiation of a civil action pursuant to

Section 205(b) of the CAA, 42 U.S.C. § 7524(b). Failure to provide all requested information in its entirety, and in the format requested, may result in additional inquiries and penalties. It is important that your responses be clear, accurate, and complete. We will regard submitted information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the CAA and/or criminal statutes. We may use any information submitted in response to this Request for Information in an administrative, civil, or criminal action.

Finally, you must submit all requested information under an authorized signature with the following certification (provided in Appendix E):

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this Request for Information, in accordance with the procedures described in the Confidentiality of Business Information (CBI) regulations, 40 C.F.R. Part 2, Subpart B. However, no such CBI claim may be made with respect to emissions data as defined at 40 C.F.R. § 2.301(a)(2). You must specify the page, paragraph, and sentence when identifying the information subject to your claim. Appendix A specifies the assertion and substantiation requirements for business confidentiality claims. EPA may, without further notice, provide the public with any information not subject to a CBI claim.

Please submit all requested information, via courier service or overnight delivery, to:

Matt Salazar, Manager, Enforcement Division
Attn: Kingsley Adeduro, Environmental Engineer
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (ENF-2-1)
San Francisco, CA 94105

Any questions concerning this Request for Information should be directed to Kingsley Adeduro at 415-972-4182 or Adeduro.Kingsley@epa.gov, or your attorney may contact Ryan Bickmore of EPA's Region 9 Office of Regional Counsel at 415-972-3058 or Bickmore.Ryan@epa.gov.



Matt Salazar, P.E., Manager
Air & TRI Section
Enforcement Division
EPA Region 9 – San Francisco

APPENDIX A

Confidential Business Information

You may assert a business confidentiality claim covering all or part of the information you provide in response to this Request for Information for any business information entitled to confidential treatment under Section 208(c) of the CAA, 42 U.S.C. § 7542, and 40 C.F.R. Part 2, subpart B. Under Section 208(c) of the CAA, you are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” *See* 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2, subpart B. EPA will construe your failure to furnish a business confidentiality claim with your response to this Request for Information as a waiver of that claim, and the information may be made available to the public without further notice to you.

To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time you submit your response to this Request for Information. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event.

The criteria EPA will use in determining whether material you claim as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. §§ 2.208 and 2.301. These regulations provide, among other things, that you must satisfactorily show that: (1) the information is within the scope of business confidentiality as defined at 40 C.F.R. § 2.201(e), (2) that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, (3) the information is not and has not been reasonably obtainable by legitimate means without your consent, and (4) the disclosure of the information is likely to cause substantial harm to your business’ competitive position. *See* 40 C.F.R. § 2.208 (a)-(e). Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. *See* 42 U.S.C. § 7542(c); 40 C.F.R. § 2.301(e).

If you assert a claim of business confidentiality in connection with information and documents forwarded in response to this Request for Information, in accordance with 40 C.F.R.

§ 2.204(e)(4), EPA is requesting that you answer the following questions with respect to any information or document for which you assert a claim of business confidentiality:

1. What specific portions of the information are alleged to be entitled to confidential treatment? Specify by page, paragraph and sentence when identifying the information subject to your claim.
2. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period you have specified.
3. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity whether disclosure of the information is likely to result in substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effect. How could your competitors make use of this information to your detriment?
7. Is there any other explanation you deem relevant to EPA's determination of your business confidentiality claim that is not covered in the preceding questions? If so, you may provide such additional explanation.

You must furnish comments to the above questions concurrent with your response to this Request for Information if you have claimed any information as business confidential. *See* 40 C.F.R. § 2.204(e)(2). Pursuant to 40 C.F.R. § 2.205(b)(2), you may request an extension of this deadline. EPA will construe your failure to furnish timely comments as a waiver of your confidentiality claim, consistent with 40 C.F.R. § 2.204(e)(1). Please submit your comments to:

Kingsley Adeduro, Environmental Engineer
U.S. Environmental Protection Agency, Region 9

75 Hawthorne Street (ENF-2-1)
San Francisco, CA 94105

Pursuant to 40 C.F.R. § 2.205(c), you are hereby advised that information you submit as part of your comments may be regarded by EPA as entitled to confidential treatment if, when it is received by EPA, it is marked in accordance with 40 C.F.R. § 2.203(b). As required by 40 C.F.R. § 2.204(e)(6), you may assert a business confidentiality claim covering all or part of your response to these questions, as provided in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2. EPA will construe the failure to furnish a confidentiality claim with your comments as a waiver of that claim, and the information may be made available to the public without further notice to you.

APPENDIX B

REQUEST FOR INFORMATION FOR XTREME DIESEL PERFORMANCE, LLC

Xtreme Diesel Performance, LLC and any of its affiliates (“XDP” or “you”) must submit the following information to the United States Environmental Protection Agency pursuant to Section 208 of the CAA, 42 U.S.C. § 7542, regarding the sale or offering for sale of certain parts and products.

1. Identify each exhaust system or exhaust system component, including product kits (collectively “component” or “product”) offered for sale by XDP during the period from January 1, 2015 through the date of this letter that enables the customer or end-user to bypass, defeat, or otherwise render inoperative Emission Related Parts (e.g., straight pipes, down pipes, turbo-back exhaust systems, header-back exhaust systems, connecting pipes, EGR blockers, and EGR delete kits). Such components may include, but are not limited to, those described on your website at www.xtremediesel.com and all related pages.

Be advised that this Request for Information pertains to all components described herein that make it possible for customers or end-users to bypass Emission Related Parts whether sold individually or as part of a kit, and regardless of any claims made by XDP that a particular component is for testing, maintenance, off-road, or race use only, or any other similar claims.

2. For each component identified in response to Question 1, provide the following information (preferably in Excel format, unless the question asks for copies of documents):
 - a. State the XDP part number and identifying name, the part number and identifying name from the manufacturer (if different), and the vehicle applications by make, model, and year.
 - b. Describe the function of the component and explain how it enables the customer or end-user to bypass, defeat, or otherwise render inoperative Emission Related Parts.
 - c. Provide copies of the technical documentation for each component, including, but not limited to, product manuals, technical specifications, installation and operating instructions, and warranty information.
 - d. Indicate whether the component is accompanied by the following disclaimers, statements, or other similar language in any documentation, marketing materials, advertisements, websites, or other media:
 - “This product is not intended to be installed on vehicles registered for highway use”

- “For off-road/race use only”

Provide references to all materials containing such statements.

- e. If XDP has recommended that the component be used for testing, maintenance, racing, or off-road use only, describe the mechanisms, if any, that XDP has implemented to ensure that the component is only used for such purposes.
 - f. State the quantity that was sold by XDP to customers with shipping addresses in the United States during each year from January 1, 2015, through the date of this letter.
 - g. Provide copies of receipts for the total quantity of each component sold by XDP to customers with shipping addresses in the United States during each year from January 1, 2015, through the date of this letter.
3. Identify each programmer, module, tuner, ECM calibration tool, or engine management product (collectively “EM products”) offered for sale by XDP during the period from January 1, 2015 through the date of this letter that:
- a. disables or renders inoperative an emission control device or Emission Related Part; and/or
 - b. reads, clears, or prevents the occurrence of vehicle diagnostic trouble codes, or uses any other means to interfere with the proper functioning of the vehicle’s on-board diagnostic system to detect and report a malfunctioning, non-functioning, or missing emission control device or Emission Related Part.

Such EM products may include, but are not limited to, those described on your website at www.xtremediesel.com and all related pages.

Be advised that this Request for Information pertains to all EM products described herein regardless of any claims made by XDP that a particular EM product is for testing, maintenance, off-road, or race use only, or any other similar claims.

4. For each EM product identified in response to Question 3, provide the following information:
- a. Identify the manufacturer and supplier (if different) of both the hardware and software.
 - b. State the XDP product number and identifying name, the product number and identifying name from the manufacturer (if different), and the vehicle applications by make, model, and year.
 - c. Describe what the EM product does and how it functions or operates, including how the

EM product bypasses Emission Related Parts or facilitates the operation of the vehicle with an Emission Related Part missing. If the EM product has multiple modes (e.g., maintenance mode, racing mode) describe the purpose and function of each mode, including how each mode bypasses Emission Related Parts or facilitates the operation of the vehicle with an Emission Related Part missing.

- d. Indicate whether the EM product is capable of bypassing or rendering inoperative any Emission Related Part without the use of additional equipment (e.g., a straight pipe) and, if so, identify which Emission Related Part(s).
- e. Indicate whether the EM product is sold as part of a kit (e.g., with an exhaust component identified in response to Question 1) and, if so, identify the name of the kit and identify all of the components and EM products that are included in that kit.
- f. Provide copies of the technical specifications, installation and operating instructions, and warranty information.
- g. Indicate whether the EM product is described by XDP in any documentation, marketing materials, advertisements, websites, or other media with the following statement or similar language:
 - “Legal for off-road or racing use only.”

Provide references to all materials containing such statements.

- h. If XDP has recommended that the EM product be used for testing, maintenance, racing, or off-road only, describe the mechanisms, if any, that XDP has implemented to ensure that the EM product is only used for such purposes.
 - i. State the quantity that was sold by XDP to customers with shipping addresses in the United States during each year from January 1, 2015, through the date of this letter.
 - j. Provide copies of receipts for the total quantity of each EM product or EM product kit sold by XDP to customers with shipping addresses in the United States during each year from January 1, 2015, through the date of this letter.
- 5. Identify all other EM products not identified in response to Question 3 offered for sale by XDP during the period from January 1, 2015 through the date of this letter.
 - 6. For each EM product identified in response to Question 5, provide the following information:
 - a. Identify the manufacturer and supplier (if different) of both the hardware and software.

- b. State the XDP product number and identifying name, the product number and identifying name from the manufacturer (if different), and the vehicle applications by make, model, and year.
 - c. Indicate whether the EM product is covered by an Executive Order (EO) from the California Air Resources Board (CARB) and, if so, provide the EO number. If the EM product is not covered by a CARB EO, indicate whether any tests have been conducted that measure the impact of the EM product on motor vehicle air pollutant emissions, or that measure the impact of the EM product on a vehicle's emission control devices or elements of design.
 - d. Indicate whether the EM product is open source (i.e., customers or end-users can make changes to the software after purchase) or locked (i.e., customers or end-users can only use pre-loaded tunes or tunes subsequently purchased from the manufacturer or other third parties).
 - e. State the quantity that was sold by XDP to customers with shipping addresses in the United States during each year from January 1, 2015, through the date of this letter.
- 7. Describe the organizational structure of XDP, and provide an organizational chart that depicts the parent and/or subsidiary companies affiliated with XDP, along with each companies' relative ownership interest.
 - 8. Provide a copy of your articles of incorporation and by-laws.
 - 9. Identify your current net worth and annual revenue for the past calendar or fiscal year.
 - 10. Identify each person responsible for responding to this Request for Information, including their title, and the question(s) to which they responded.

APPENDIX C

Instructions

1. This Request is a continuing request. You must promptly supplement your response in the event you learn that you possess responsive documents or information not yet produced, or gain possession, custody, or control of responsive documents or information after initially responding to this Request.
2. Provide responses to this Request for Information in English, in written document form, and in electronic form using spreadsheet or word processing software (e.g., Word or Excel) or in PDF format, provided you have access to such software.
3. Where documents or information necessary for a response are not in your possession, custody, or control, indicate in your response why such information is not available or in your possession, custody, or control, and identify any source that either possesses or is likely to possess such information.
4. All submitted documents should be copies and not original documents.
5. Where you have previously submitted to EPA information requested herein, re-submit the information in the format requested. Identify the material that was previously provided, the date on which it was provided, and the person at EPA to whom it was provided.
6. You must maintain an unaltered and complete copy of your website as it exists at the time this letter is received. This includes all pages, graphical elements, and text displayed on the website. You must provide this information in readable electronic format to EPA within ten days upon request.

APPENDIX D

Definitions

1. All terms used in this Request for Information will have their ordinary meaning unless such terms are defined in the CAA, 42 U.S.C. §§ 7401 *et seq.*, or the regulations found at 40 C.F.R. Parts 85 and 86.
2. The terms “affiliate” or “affiliated” are used to indicate a relationship to a specified person, and mean any person that, directly or indirectly or through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with such person (other than entities serving solely as customs brokers).
3. The terms “document” and “documents” means any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these. The term includes electronic mail and text messages. If in computer format or memory, each such document must be provided in translation to a form useable and readable by EPA, with all necessary documentation and support. All documents in hard copy also should include attachments to or enclosures with any document.
4. The term “electronic control module” or “ECM” means a device that receives inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. The ECM uses software programming including calculations and tables of information to provide the appropriate outputs. ECM can be a generic term but may refer specifically to the engine control module when discussing emission controls on vehicles and engines. Other ECMs may be incorporated separately with multiple units used to control various engine, vehicle, or equipment functions. Examples of electronic control modules include, but are not limited to, Engine Control Module, OBD Control Modules, Powertrain Control Module (PCM), Transmission Control Module (TCM), Body Control Module (BCM) and after treatment control module. Any or all of these modules may be combined into a single unit.
5. The term “Emission Related Parts” means those parts installed for the specific purpose of controlling emissions or those components, systems, or elements of design which must function properly to assure continued vehicle emission compliance as defined in 40 C.F.R. § 85.2102 (including but not limited to a catalytic converter, a turbocharger, an EGR, a diesel particulate filter, a secondary catalytic reactor, a fuel injector, a selective catalytic reduction, an oxygen sensor, onboard diagnostics, and electronic control).
6. The term “end-user” means the person who ultimately uses or is intended to ultimately use a product.
7. The term “exhaust gas recirculation” or “EGR” includes systems which redirect, usually by

use of an EGR valve, a portion of engine exhaust back into the engine's combustion chamber to cool and reduce peak combustion temperatures and pressures, thereby reducing the production of nitrogen oxide (NO_x). The EGR system may include an EGR cooler to cool the recirculated exhaust to further reduce the combustion temperature.

8. The term "onboard diagnostics" or "OBD" includes systems which monitor components that can affect the emission performance of the vehicle to ensure that the vehicle remains as clean as possible over its entire life, and assists repair technicians in diagnosing and fixing problems with the computerized engine controls. If a problem is detected, the OBD system illuminates a warning lamp on the vehicle instrument panel to alert the driver.
9. The term "person" includes an individual, corporation, partnership, limited liability company, sole proprietorship, joint venture, or any formal or informal entity, organization or association.
10. The terms "you", "your", and "XDP" include Xtreme Diesel Performance, LLC and any affiliates, predecessors, successors, and assigns.

APPENDIX E

Statement of Certification

You are submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") Request for Information, issued pursuant to Section 208(a) of the Clean Air Act, to determine compliance with the Clean Air Act and its affiliated regulations.

I certify that I am fully authorized by _____ [corporate affiliation] to provide the above information on its behalf to EPA.

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

Date: _____

Name (Printed): _____

Signature: _____

Title: _____

